

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early
Termination of Probation
By:**

Case No. 800-2018-045276

Matthew Joseph Vuksinich, Jr., M.D.

**Physician's and Surgeon's
Certificate No. G43289**

Respondent.

DECISION


The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 28, 2020.

IT IS SO ORDERED April 28, 2020.

MEDICAL BOARD OF CALIFORNIA

By:



**Kristina D. Lawson, J.D., Chair
Panel B**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early Termination of
Probation of:**

MATTHEW JOSEPH VUKSINICH, M.D., Petitioner

Case No. 800-2018-045276

OAH No. 2020010601

PROPOSED DECISION

Regina Brown, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on March 2, and 5, 2020, in Oakland, California.

Brenda P. Reyes, Deputy Attorney General, represented the Office of the
Attorney General, Department of Justice.

Marvin C. Firestone, M.D., Attorney at Law, represented petitioner Matthew
Joseph Vuksinich, M.D.

The matter was submitted for decision on March 5, 2020.

FACTUAL FINDINGS

License History

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 43289 to petitioner Matthew Joseph Vuksinich, M.D., on September 8, 1980.

2. On November 18, 2012, the Board filed an accusation alleging that petitioner's certificate was subject to disciplinary action due to unprofessional conduct for a criminal conviction substantially related to the practice of medicine and for dishonesty/false representation. On May 18, 2016, the Board issued a Decision After Non-Adoption, effective June 17, 2016, that revoked petitioner's certificate and placed him on probation for a period of five years on conditions that included: 1) abstaining from the use of controlled substances and alcohol; 2) submitting to biological fluid testing; 3) attending substance abuse support group meetings; 4) having a worksite monitor; and 5) completing an ethics course. Petitioner's probation is scheduled to terminate on June 16, 2021.

3. The circumstances underlying petitioner's discipline are that: in 2004, petitioner was arrested at the airport after methamphetamine and a pipe were found in his carry-on luggage; in February 2006, he was convicted of a misdemeanor violation of alcohol-related reckless driving; in June 2009, he was arrested for driving under the influence (DUI) of alcohol; and in February 2012, he was convicted of a misdemeanor violation of driving while under the influence of alcohol. Petitioner fully complied with his criminal court probation and has been released from probation for all offenses.

4. On June 22, 2018, the Board received petitioner's petition to terminate probation and this hearing followed.

Petitioner's Evidence

5. In the narrative statement attached to his petition, petitioner explained that as a result of his convictions in 2009 and 2012, he was designated as a multiple DUI offender. Even before he was placed on probation by the Board, as a condition of his employment, petitioner was evaluated and monitored by the California Physicians Health Program. The monitoring included two years of daily call-in for random urine testing, followed by one year of quarterly hair analysis and urine testing. All of the test results were negative. He underwent six months of individual psychotherapy and completed a 30-day intensive outpatient chemical dependency program. It was determined that although petitioner admitted to alcohol abuse, his use did not constitute alcohol dependency under the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) or alcohol use disorder under the DSM-V.

6. Petitioner's testimony regarding the circumstances underlying his alcohol abuse and his recovery efforts was forthright and credible.

7. Petitioner has been sober since September 2012, and he no longer has the urge to consume alcohol. Although he stopped attending Alcoholics Anonymous after he completed his criminal probation, he regularly attends a substance abuse support group. He believes that he is rehabilitated, safe to practice medicine, and is a better physician for having gone through the rehabilitation process. Petitioner has an increased sensitivity to patients with substance abuse problems and discusses treatment options with patients. When he is no longer subject to the Board's conditions of probation, he intends to continue abstinence to prevent recurrence.

Petitioner's Compliance with Board's Probation Conditions

8. Petitioner has complied with all conditions of his probation imposed by the Board.

9. Generally, the results of petitioner's biological fluid testing have been negative. However, in February 2019, he had a positive test after eating poppy seed cake. He immediately called his probation monitor and the testing agency to disclose that he ingested the cake. The Board issued a citation; however, after a telephonic meeting, the citation was withdrawn.

10. Petitioner regularly attends a weekly substance abuse support group. Burt Weaver, M.A., with Sutter Health MPI Treatment services, wrote a letter dated January 7, 2020, confirming that petitioner successfully completed a 30-day evening and weekend intensive outpatient program and has been abstinent for over seven years. Furthermore, Weaver wrote that petitioner is an active participant in the weekly support group sessions and he shows insight into the nature of his problem. Weaver believes that petitioner is not the type of individual who might relapse in the future as he demonstrates a solid foundation for prevention and petitioner would not be at an increased risk even if he were no longer required to attend weekly support group sessions.

11. Petitioner submitted proof that he completed a professionalism course in ethics and continuing medical education courses. He has paid all financial obligations.

12. Don L. McIntyre, M.D., testified at hearing and wrote two letters of support for petitioner. Dr. McIntyre served as petitioner's worksite monitor. Dr. McIntyre is Board-certified in emergency and family medicine and has practiced for over 40 years. Dr. McIntyre worked with petitioner for 12 years at Seton Coastside

Medical Center (Seton), Moss Beach. Dr. McIntyre has observed petitioner provide exemplary patient care with thorough and complete charting. Dr. McIntyre described petitioner as professional, flexible in schedule changes, thorough, dependable, and staying current on medical literature and education. Dr. McIntyre has also observed that petitioner, during the probation period, has taken a more compassionate position in dealing with patients with issues of impairment and substance abuse and offering helpful advice. Dr. McIntyre has never observed petitioner have any signs of impairment. Dr. McIntyre opined that petitioner has learned well from his actions that resulted in him being placed on probation, and he does not believe that there is any likelihood that petitioner will relapse. Dr. McIntyre does not "see that there is anything to be gained by continuing his probation and enthusiastically support[s] his petition for termination of the same."

Petitioner's Background

13. Petitioner graduated from Northwestern University Honors Program in Medical Education in 1978, with an M.D. Petitioner completed an internship in general surgery at Eastern Virginia Graduate School of Medicine in 1979, a residency in surgery at Stanford University in 1981, and a residency in surgery at Emanuel Hospital in Portland in 1982.

14. Since 1983, petitioner has worked in several emergency departments in hospitals in Northern California. Since 2000, petitioner has worked in the emergency department at Seton. He worked part time at Muir/Diablo Occupational Medicine in Concord from April 2006 to August 2008, and East Bay Physicians Medical Group in Lafayette from November 2015 to May 2017.

15. Petitioner plays music and performs for disadvantaged persons.

16. Petitioner is highly regarded by his former supervisor and present colleagues who wrote letters for the Board's consideration. Mark A. Notash, M.D., the former Medical Director at Seton, served as petitioner's direct supervisor from December 2015 to 2018. Petitioner served as the Assistant Medical Director and created equitable work schedules, and ran an effective and comprehensive quality assurance program and peer review committee. Dr. Notash described petitioner as extremely reliable, punctual, a real team player, as having an impressive work ethic and showing a high degree of moral fortitude. According to Dr. Notash, petitioner continually provided outstanding patient care and only had one complaint from a patient when petitioner appropriately declined to prescribe narcotic pain medications. Dr. Notash stated that petitioner excelled in areas including patient satisfaction, quality of care, timeliness and appropriateness of documentation. Dr. Notash has no cause for concern with regard to petitioner's sobriety or patient safety and would hire petitioner in his current practice.

Suzan Goodman, M.D., M.P.H., has known petitioner for 13 years at Seton. She has never observed petitioner to show signs of substance abuse. Dr. Goodman's letter echoed the other colleagues and she supports his petition without reservation. Dr. Goodman also noted that she has witnessed petitioner provide increasing support to his son and step-son, who have lived with petitioner for extended periods of time.

Raymond W. Lee, M.D., is petitioner's colleague at Seton. Dr. Lee does not believe that petitioner is an alcoholic, and instead, he is a victim of his own poor judgment. Dr. Lee has never suspected any evidence of substance abuse by petitioner. Dr. Lee believes that petitioner has fully acknowledged his errors and has accepted responsibility for his actions. Dr. Lee strongly supports the petition.

John J. Zecherle, M.D., has known petitioner since 2014, as a colleague at Seton. Dr. Zecherle has never observed petitioner behave in any way suggestive of substance abuse disorder. Dr. Zecherle described petitioner as a trusted and reliable colleague and supports the petition.

17. Petitioner is eager to terminate his probation because: a) he believes that he has learned a valuable lesson from this experience; b) he has taken appropriate steps to obviate recurrence; and c) he believes the restrictions of probation are limiting his professional and personal life. Also, the hospital where petitioner works is facing closure in May, as a result of bankruptcy, and petitioner will have to seek new employment which will be challenging, especially since he has been excluded as a provider for Blue Shield due to his probation status.

18. Further Board monitoring of petitioner serves no valid purpose.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding for the restoration of a license, the burden rests on the petitioner to prove that he or she is rehabilitated and entitled to have his or her license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The showing of rehabilitation must be sufficient to overcome the former adverse determination; the standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

Statutory Authority

2. Business and Professions Code section 2307 provides that a licensee whose certificate has been placed on probation for three years or longer may petition for early termination of probation after two years. Petitioner's certificate was placed on probation effective June 17, 2016.

3. In determining whether to grant a petition for early termination of probation, all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability may be considered. (Bus. & Prof. Code, § 2307, subd. (e).)

4. Factors considered in determining whether a licensee has been rehabilitated include the following: a) the nature and severity of the act involved; b) subsequent misconduct; c) the amount of time that has elapsed since the misconduct took place; d) evidence of rehabilitation; and e) whether the licensee has complied with the terms of probation. (Cal. Code Regs., tit. 16, §§ 1360.1, 1360.2.)

5. The Office of the Attorney General contends that petitioner should be required to complete the entire five years of probation for protection of the public and to demonstrate that he has been sufficiently rehabilitated. The Office of the Attorney General questions petitioner's sincerity during his testimony and his attitude about his recovery because he challenged the allegations in the accusation at an administrative hearing in December 2015.

Analysis

6. The above described criteria have been considered to determine the outcome of petitioner's request for early termination of probation. Petitioner testified with candor and humility at hearing. The conduct underlying his most recent conviction occurred over eight years ago and he completed his criminal court probation. He has participated in a variety of activities to address his alcohol abuse. He presented ample evidence of his continued commitment to his sobriety. He is a highly skilled and respected emergency department physician. Importantly, petitioner has served a substantial amount of his probation and he has successfully complied with all probation conditions.

Petitioner has established by clear and convincing evidence that he is rehabilitated to the extent that further monitoring by the Board is not required to protect the public. Cause exists, pursuant to Business and Professions Code section 2307, to grant the petition and to terminate petitioner's probation.

ORDER

The petition for early termination of probation of petitioner Matthew Joseph Vuksinich, M.D., is granted. Physician's and Surgeon's Certificate No. G 43289 is fully restored.

DATE: April 6, 2020

DocuSigned by:
Regina Brown
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REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings